

DOCKET NO. 2000-355-C - ORDER NO. 2000-876

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By letter, the Commission's Executive Director instructed Telergy to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The proposed Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. Telergy complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

A Petition to Intervene was received from the South Carolina Telephone Coalition (“SCTC”) on August 31, 2000. Thereafter, on September 8, 2000, Counsel for SCTC filed with the Commission a Stipulation in which Telergy stipulated that it would only seek authority in non-rural local exchange (“LEC”) service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent’s service area, unless and until Telergy provided written notice of its intent prior to the date of the intended service. Telergy also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Telergy agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to Telergy provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on October 10, 2000, at 2:30 p.m., in the Commission’s Hearing Room. The Honorable William Saunders, Chairman, presided. Telergy was not represented by counsel. Adelaide D. Kline, Staff Counsel, represented the Commission Staff.

Theresa Atkins, Assistant General Counsel of Telergy, appeared and offered testimony in support of the Company’s Application. A letter from William M. Kelly, Jr., Executive Vice President of Telergy Network Services, Inc., authorizing Ms. Atkins to represent and act on behalf of the Company, was entered into the evidence of the case.

Ms. Atkins's job responsibilities include handling of legal and regulatory matters, dealing with rights of way agreements, corporate matters, certification proceedings, tariff filings, sales agreements and financing matters. Telergy is a New York corporation that has received authorization to operate as a foreign corporation in the State of South Carolina by the Secretary of State. According to the record, Telergy is a facilities-based provider of integrated broadband telecommunications services and high bandwidth fiber optic capacity in the northeastern United States. The Telergy network is designed to be a regional fiber optic intranet combining direct last-mile connections, intracity rings and long haul capacity. The network is being built over broad contiguous rights of way in the New York City region, primarily using access rights granted by utility companies. According to the testimony, Telergy owns and operates its own switches in New York state and is in the initial stages of building out its fiber network in the northeast and along the east coast.

Ms. Atkins testified that the Company, as of the hearing date, had received authority to provide its telecommunications services in approximately twenty states and is operating in New York and Rhode Island. She said that the Company expects to be operating in Pennsylvania and New Jersey within the fourth quarter of 2000, and has certification pending in thirty states. Ms. Atkins testified that Telergy Network Services, Inc. is a privately owned company, an operating subsidiary under the holding company, Telergy Operating, Inc. Telergy, Inc. is the parent company. She said that Telergy's network typically is structured along utilities' rights of way. She also stated that Telergy

partners with utilities in some cases to bundle and market energy services with telecom services.

Ms. Atkins presented testimony on Telergy's technical, financial, and managerial ability to offer services in South Carolina. She stated the Company will initially operate as a reseller and expects to become facilities-based in South Carolina towards the end of 2001. She said that Telergy expects to use Nortel switches and plans to collocate with the incumbent local exchange carrier's (ILECs) central offices or in "telco hotels." She explained that "telco hotels" are usually independently owned buildings whose landlords offer space to competitive carriers and interexchange carriers (IXCs) for the collocation of their equipment rather than leasing space in the ILEC's central office. She further explained that internet service providers (ISPs) also sometimes locate their equipment in "telco hotels" and connect there with the IXCs to get out onto the Internet. Ms. Atkins testified that Telergy expects to offer all forms of voice and data services, ISDN, private line and data storage services in South Carolina.

Ms. Atkins offered that Telergy plans to focus primarily on the commercial market in South Carolina but will also offer its services to the residential market. She said Telergy intends to do direct marketing in South Carolina through the use of radio and television advertising. She stated the Company does not intend to do any telemarketing in South Carolina but is aware of the Commission's marketing guidelines. She further stated the Company does not intend to offer prepaid calling cards in South Carolina. Ms. Atkins testified that Telergy's underlying carrier in other states is BellAtlantic for local,

and MCI WorldCom and Global Crossing for long distance. She said that Telergy does not yet have an interconnection agreement in South Carolina.

Regarding the Company's technical ability to offer services in South Carolina, the record reveals Telergy operates a customer service department in East Syracuse, New York, which responds to customer inquiries. Customer complaints may be reported twenty-four hours a day, seven days a week to Telergy's toll free customer service number which is 1-800-889-6716. This number will appear on the customer's bills and all mailings. Christine Borreggine is Director of Telergy's Customer Care Department. Ms. Atkins will be the Company's regulatory contact person. Ms. Atkins's testimony states Telergy has sufficient technical resources and ability to provide telecommunications services it proposes to provide in South Carolina. Telergy has in-house operations to bill customers directly on a monthly basis. Fixed monthly charges will be billed monthly in advance and usage-sensitive charges will be billed in arrears.

Ms. Atkins also testified the Company's management represents a broad spectrum of business and technical disciplines, possessing many years of individual and aggregate telecommunications experience. The record reveals that Brian P. Kelly, Chairman of the Board and Chief Executive Officer of Telergy, co-founded Telergy, Inc. in April 1995 and has been serving as Chairman of the Board and Chief Executive officer since its inception. Kevin J. Kelly is also a co-founder of Telergy and has served as Executive Vice President since April 1998, and Vice Chairman of the Board of Directors since April 2000. William M. Kelly, Jr., also a co-founder of Telergy, has served the Company as Secretary, and now serves as Executive Vice President. The three co-founders of

Telergy all previously were associated with Telecommunications Management Systems, a telecommunications and television billing service provider specializing in the healthcare industry. Ms. Atkins, Assistant General Counsel for Telergy, has devoted the past three and a half years of her legal career solely to telecommunications work in the competitive local exchange environment. Prior to joining Telergy, she served as Senior Counsel to the New York State Court of Appeals, as Assistant Counsel to New York Governor Mario Cuomo, and as a Commercial Law Adjunct Professor at Albany Law School.

Nicholas A. Merrick, Telergy's Senior Vice President and Chief Financial Officer, previously was with Excel Communications Inc. which was acquired by Teleglobe. Joseph Ciancaglini has been serving as Telergy's Chief Operating Officer since August 1999. David M. Wolfe has been serving as Telergy's Chief Technical Officer since April 2000. He previously was employed with NYNEX/Bell Atlantic. Jimmy Wang has been serving as Telergy's Chief Information Officer since March 2000. He was previously employed by AT&T Local Systems. Barry M. Vaughn has been serving as Vice President, Sales and Marketing for Telergy, since November of 1999. Mr. Vaughn held a number of marketing, technical and operational positions with Health Care Market Management for almost twenty years. Nigel S.B. Price has been serving as Vice President, Information Technology, since May of 1999. He spent twenty-five years with British Telecom in various management and systems development roles.

Ms. Atkins also testified that Telergy has the financial resources and ability to provide telecommunications services in South Carolina. She stated that Telergy is a

development stage company that has the full support and commitment to financial backing from its parent company, Telergy Operating, Inc., in addition to full support from Telergy, Inc. The record reveals that Telergy has arranged bank loans and lines of credit that may be used for asset acquisition, working capital, and/or corporate expansion. The Company recently announced the completion of a \$350 M financing which includes \$164.7 M in new facilities. The record reveals that Telergy intends to use the funds available from its new facilities, as well as the \$15M of proceeds received in July 2000 from the sale of its series C Preferred Stock to El Paso Global Networks, to continue its network build out and marketing expansion, particularly in the New York City metropolitan area where Telergy has already deployed more than 16,500 fiber miles and over 100 miles of innerduct. Ms. Atkins testified that Jim Bubnack is the comptroller for Telergy and will be the Company's financial contact person. She said he could be reached at the Company's headquarters in East Syracuse, New York, at toll free number (800) 877-6543. According to the record, Telergy currently maintains its book of accounts in accordance with the Generally Accepted Accounting Principles ("GAAP") and requests this Commission grant it permission to use that system.

Telergy also requested a waiver of S.C. Code Ann. Regs. 103-631 (1976) so that the Company will not be required to publish local exchange directories. According to the record, Telergy will make arrangements with the incumbent local exchange carriers whereby the names of Telergy's customers will be included in the directories published by the incumbent local exchange carriers. Further, Telergy requested a waiver of the requirement found in S.C. Code Ann. Regs. 103-610 that books and records be kept in

South Carolina. Telergy wishes to keep its books and records at its headquarters in East Syracuse, New York. Further, Telergy requests a waiver of any reporting requirements which, although applicable to incumbent LECs, are not applicable to competitive providers such as Telergy.

Upon receiving certification from the Commission, Ms. Atkins testified Telergy will abide by and comply with the Commission's rules and regulations and Commission Orders in its operations in South Carolina. She stated that the Company will make all suggested changes to the tariffs as suggested by the Commission Staff. Further, the testimony reveals Telergy has never had an application for a certificate of public convenience and necessity denied nor has the Company ever been the subject of an investigation by a state regulatory body or the Federal Communications Commission. Additionally, as of the hearing date, Telergy had not provided any intrastate telecommunications services within the State of South Carolina.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Telergy is organized as a corporation under the laws of the State of New York and has received a certificate from the South Carolina Secretary of State to transact business within South Carolina as a foreign corporation.
2. Telergy wishes to provide local exchange services and interexchange services within the State of South Carolina.

3. The Commission finds that Telergy possesses the technical, financial, and managerial resources sufficient to provide the service requested.

4. The Commission finds that Telergy's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1999).

5. The Commission finds that Telergy will support universally available telephone service at affordable rates.

6. The Commission finds that Telergy will provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by Telergy "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1999).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Telergy to provide competitive resold and facilities-based intrastate local exchange services only to customers located in the non-rural areas of South Carolina. The terms of the Stipulation between Telergy and the SCTC are approved, and adopted as a portion of this Order. Any proposal to provide local exchange service to a customer in a rural incumbent LEC's service area is not included in the instant grant of authority. Further, the Company is granted authority to provide facilities-based and resold intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through

the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. With regard to the interexchange service offerings of Telergy, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. Telergy shall not adjust its interexchange rates below the approved maximum level without notice to the Commission and to the public. Telergy shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 6, 1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1999).

4. If it has not already done so by the date of issuance of this Order, Telergy shall file its revised long distance tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Telergy shall file its local tariff immediately after it has completed its interconnection agreement in the State of South Carolina.

5. Telergy is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

6. With regard to the Company's resale of interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. Telergy shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Telergy changes underlying carriers, it shall notify the Commission in writing.

8. With regard to the origination and termination of toll calls within the same LATA, Telergy shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

9. Telergy shall file annual surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Telergy shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings. The form the Company shall use to file annual financial information with the Commission can be found at the Commission's website at www.psc.state.sc.us/forms. The two page form the Company shall use to file this information is entitled "Annual Information on South Carolina Operations for Interexchange Companies and AOS".

10. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Telergy to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association ("SC NENA") with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order

and prior to providing services within South Carolina, Telergy, shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Telergy shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form the Company shall use to provide this information to the commission can be found at the commission's website at www.psc.state.sc.us/forms. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

12. Telergy shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

13. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

14. Telergy shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The Annual Report for Competitive Local Exchange carriers consists of four pages. The form the Company shall use to provide this information to the Commission can be found at the Commission's website at www.psc.state.sc.us/forms. Telergy shall keep such financial records as needed to comply with the annual report and gross receipt filings.

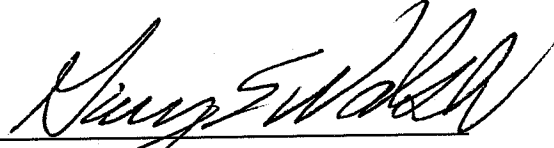
15. By its Application, Telergy requested waivers from Commission requirements (1) of publishing a directory as found in 26 S.C. Code Ann. Reg. 103-631 (1976), (2) of keeping its records in South Carolina as found in 26 S.C. Code Reg. 103-610 (1976), (3) of maintaining its books and records in conformance with the Uniform System of Accounts, and (4) of any reporting requirements which are not applicable to competitive providers. The Commission finds the reasoning behind Telergy's requests for waivers of publishing a directory, keeping its records in South Carolina, and maintaining its books and records in conformance with the Uniform System of Accounts, reasonable and hereby grants the waivers of these regulations. The Commission denies the Company's request for a waiver of any reporting requirements which are applicable to incumbent LECs. In the future, upon the request of the Company, this Commission may grant a waiver of a specific regulation if the Company demonstrates that compliance with the regulation introduces unusual difficulty and that the waiver is in the public interest. However, Telergy is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

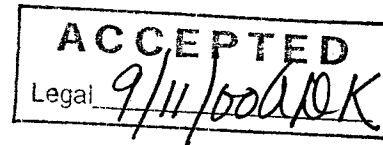

Chairman

ATTEST:


Executive Director

(SEAL)

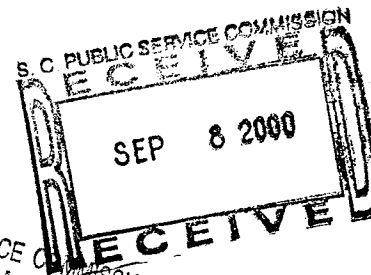
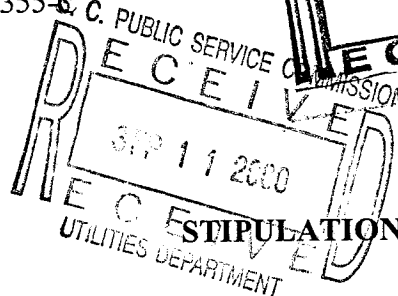
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BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2000-355-C

Re: Application of Telergy Network Services, Inc.)
for a Certificate of Public Convenience and)
Necessity to Provide Local Exchange and)
Interexchange Telecommunications Services)
in the State of South Carolina)



The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Telergy Network Services, Inc. ("Telergy") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Telergy's Application. SCTC and Telergy stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Telergy, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. Telergy stipulates and agrees that any Certificate which may be granted will authorize Telergy to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. Telergy stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. Telergy stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and

RETURN DATE: OK
SERVICE: OK

until Telergy provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Telergy acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Telergy stipulates and agrees that, if Telergy gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then Telergy will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Telergy acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and Telergy, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Telergy agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. Telergy hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 7th day of September, 2000.

Telergy Network Services, Inc.:

Theresa Allen

South Carolina Telephone Coalition:

Margaret M. Fox

M. John Bowen, Jr.
Margaret M. Fox
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
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Attorneys for the South Carolina Telephone
Coalition

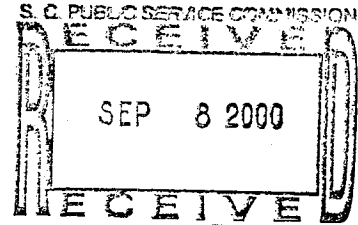
ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2000-355-C

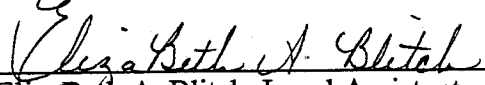


Re: Application of Telergy Network Services, Inc.)
for a Certificate of Public Convenience and)
Necessity to Provide Local Exchange and)
Interexchange Telecommunications Services)
in the State of South Carolina)

**CERTIFICATE OF
SERVICE**

I, ElizaBeth A. Blitch, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

Theresa Atkins, Esquire
Telergy Network Services, Inc.
One Telergy Parkway
East Syracuse, New York 13057.


ElizaBeth A. Blitch, Legal Assistant
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

September 8, 2000

Columbia, South Carolina